



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230119-0017]

RIN 0648-BL58

Reef Fish Resources of the Gulf of Mexico and Coastal

Migratory Pelagic Resources of the Gulf of Mexico and

Atlantic Region; Conversion of Historical Captain Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures as described in an abbreviated framework action under the Fishery Management Plans (FMPs) for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and Atlantic Region (CMP FMP). This proposed rule would enable a permit holder to replace a historical captain endorsement in the reef fish and CMP fisheries in the Gulf of Mexico (Gulf) with a standard Federal charter vessel/headboat permit. NMFS expects that this proposed rule would reduce the potential regulatory and economic burden on historical captain permit holders.

DATES: Written comments must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on the proposed rule identified by "NOAA-NMFS-2022-0121" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter "NOAA-NMFS-2022-0121" in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Rich Malinowski, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information, e.g., name and address, confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments - enter "N/A" in the required fields if you wish to remain anonymous.

Electronic copies of the abbreviated framework action may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/framework-action->

historical-captain-permits-conversion-standard-federal-charter-headboat. The abbreviated framework includes a Regulatory Flexibility Act (RFA) analysis and a regulatory impact review.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, NMFS Southeast Regional Office, telephone: 727-824-5305; email: *rich.malinowski@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Gulf Council) manages reef fish resources in the Gulf Exclusive Economic Zone (EEZ) under the Reef Fish FMP. The CMP fishery in the Gulf of Mexico and Atlantic Region is managed jointly by the Gulf Council and South Atlantic Fishery Management Council (Councils). NMFS implements the FMPs through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

Background

During the 1980s and 1990s, the number of charter and headboat (for-hire) vessels operating in the recreational Gulf reef fish and CMP fisheries increased rapidly, creating concern among the Gulf Council, NMFS, and other members of the fishing industry about the viability of the for-hire component and the sustainability of the fish stocks they were harvesting. The Gulf Council was also concerned about the rapid increase in the number of reef

fish and CMP for-hire permits and trips, and the increased proportion of the catch harvested by the for-hire fleet.

In response to these concerns, the Gulf Council developed Amendment 14 to the CMP FMP and Amendment 20 to the Reef Fish FMP (CMP Amendment 14/Reef Fish Amendment 20) that, when implemented by NMFS, established a 3-year moratorium on the issuance of new charter vessel/headboat permits in the reef fish and CMP fisheries in the Gulf EEZ (67 FR 43558, June 28, 2002). The purpose of the moratorium was to cap the number of for-hire permitted vessels while the Gulf Council evaluated the need for further management actions to rebuild fishery resources. A fully transferable reef fish or CMP charter vessel/headboat permit, hereafter referred to as a standard permit, was issued to eligible for-hire operators, including those individuals who (1) owned a vessel with a valid charter vessel/headboat permit, or (2) could demonstrate that, prior to March 29, 2001, they had a charter vessel or headboat under construction, with associated expenditures of at least \$5,000.

The Gulf Council recognized that some captains participating in the for-hire reef fish and CMP fisheries operated other individuals' vessels and did not own their vessels, and therefore were not eligible for a standard permit. Under CMP Amendment 14/Reef Fish Amendment 20, captains who met specific eligibility requirements could apply for a permit with a historical captain endorsement,

referred to hereafter as a historical captain permit.

Unlike a standard permit, a historical captain permit is attached to the individual instead of a specific vessel and has certain restrictions. A historical captain permit requires the captain to be on the vessel when operating a for-hire trip, and a historical captain permit cannot be transferred or sold.

Persons who submitted evidence of eligibility as a historical captain within 90 days of the implementation of the CMP Amendment 14/Reef Fish Amendment 20 were issued letters of eligibility, which could be used to obtain a historical captain permit. Initially, NMFS issued a total of 141 historical captain permits to harvest reef fish and CMP species.

In 2006, NMFS implemented Reef Fish Amendment 25/CMP Amendment 17 (71 FR 28282, May 16, 2006), which established a limited access program for permitting for-hire vessels for the reef fish and CMP fisheries in the Gulf EEZ, effectively extending the permit moratorium indefinitely. The historical captain permit continued to be a category of permit following implementation of Reef Fish Amendment 25/CMP Amendment 17, and previously issued letters of eligibility remained valid, as did the historical captain permits, provided that permit holders followed procedures for permit retention and renewal.

In April 2020, NMFS implemented a framework action

developed by the Gulf Council that allowed historical captain permit holders to convert existing reef fish and CMP historical captain permits to standard charter vessel/headboat permits (85 FR 22043, April 21, 2020). At that time, 61 historical captain permits were eligible for the conversion, and all of those permits have been converted to standard permits. The Gulf Council developed the action after hearing public testimony about the economic hardships caused by the restrictions imposed on historical captain permits. Converting a historical captain permit allowed the permit holder to lease the vessel to another captain, have another captain operate the vessel, or transfer the permit to a family member or any other eligible person. A fully transferable standard permit also allows the family of a permitted captain who has died to retain the permit, unlike a historical captain permit that expires upon the captain's death.

In addition to allowing for the conversion of eligible historical captain permits, the 2020 rulemaking rendered any remaining letters of eligibility for historical captain permits invalid. However, some individuals submitted their letters to NMFS before the effective date of the 2020 rule and received historical captain permits. There are currently 4 remaining historical captain permits (two reef fish and two CMP) held by 2 individuals and the Council determined that it was appropriate to allow these permit

holders the opportunity to convert their permits to a standard permit. This would eliminate the historical captain permit category and reduce the regulatory and economic burden on those remaining historical captain permit holders.

Each standard permit and historical captain permit provides a maximum number of passengers allowed on board a vessel operating under the permit. A standard permit issued as a result this proposed rule would have the same maximum number of passengers as the historical captain permit that it would replace.

Management Measures Contained in This Proposed Rule

This proposed rule would extend the same rights and responsibilities of standard Gulf reef fish and CMP charter vessel/headboat permits to eligible individuals who choose to convert their historical captain permits to standard permits.

If an individual with an eligible historical captain permit wishes to convert the permit to a standard reef fish or CMP charter vessel/headboat permit, the individual would submit a permit application to the NMFS Southeast Fisheries Permits Office along with their current historical captain permit (original document, not a copy) and supporting documents and fees, including documentation for the vessel to which the standard for-hire permit would be attached. Unlike a historical captain permit, which is issued to an

individual, a standard permit must be issued to a vessel with a valid U.S. Coast Guard (USCG) certificate of documentation (COD) or state registration certificate (50 CFR 622.4(a)). If the permit applicant is the owner of the vessel, NMFS would verify that the vessel for which the new for-hire permit would be issued is owned by the applicant and does not have an existing Gulf reef fish or CMP charter vessel/headboat permit associated with it, as vessels are not allowed to have multiple charter vessel/headboat permits of the same type associated with them.

If the vessel to which the permit would be attached is to be leased, a fully executed lease agreement of at least 7 months, between the vessel owner and permit holder, would need to be included with the application. Note that vessel owners and lessees cannot independently hold permits for the same vessel at the same time. NMFS would then verify the vessel does not have any other Federal permit associated with it in another permit holder's name.

After NMFS verifies that the information provided with the application allows for the conversion, the historical captain permit would be converted to a standard permit for Gulf reef fish or Gulf CMP species. Due to the uniqueness of the historical captain permit number, the new permit would keep the existing permit number, *e.g.*, HRCG-9999 would convert to RCG-9999.

Classification

Pursuant to section 304(b) (1) (A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the abbreviated framework action, the respective FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the **SUPPLEMENTARY INFORMATION** section of this proposed rule. The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

This proposed rule, if implemented, would apply to operators of charter vessels and headboats (for-hire

vessels) that have a reef fish or CMP historical captain permit. There are two historical captains that each have a valid (non-expired) or renewable charter vessel/headboat historical captain permit for Gulf reef fish and Gulf CMP species for a total of four historical captain permits. Although the for-hire permit application collects information on the primary method of operation, the permit itself does not identify the permitted vessel as either a charter vessel or a headboat and vessels may operate in both capacities on separate trips. The average charter vessel is estimated to receive approximately \$94,000 (2021 dollars) in annual gross revenue; the average headboat is estimated to receive approximately \$451,000 (2021 dollars) in annual gross revenue.

The SBA has established size standards for all major industry sectors in the U.S. including for-hire businesses (NAICS code 487210). A business primarily involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$12.5 million for all its affiliated operations worldwide. All of the for-hire businesses directly regulated by this proposed rule are believed to be small entities based on the SBA size criteria. No other small entities that would be

directly affected by this proposed rule have been identified.

This proposed rule would not establish any new reporting or record-keeping requirements. It would, however, require historical captain permit holders to comply with the standard permit regulations if their historical captain permits are replaced with standard permits. The regulations stipulate that the standard permit must be issued to a vessel with a valid U.S. Coast Guard certificate of documentation or state registration certificate (50 CFR 622.4(a)). For any historical captain permit holder who elects to have their historical captain permit replaced with a standard permit and who does not currently own or lease a vessel, this would require either the purchase or lease of a vessel and payment of applicable registration and inspection fees.

This proposed rule would grant two historical captain permit holders the opportunity to replace their historical captain permits with standard permits. Because standard permits are transferrable and salable and historical captain permits are not, this would have positive economic effects in terms of increased asset value and business succession planning. Transfer values for a single standard permit ranged from approximately \$0.01 to \$147,000 (2021 dollars) during 2010 through 2018. It is not possible to estimate a meaningful average market value for these

permits with available data; however, it is expected that the value would increase relative to the passenger capacity of the historical captain permit. Additionally, once historical captain permits are replaced with standard permits, the historical captains would no longer need to be present on the vessel while the permit is in use. This would provide greater operational flexibility and potentially increase profits for affected small entities.

There are also some potential economic costs to small entities from this proposed rule. Because replacement of historical captain permits with standard permits would be optional, only those permit holders who choose to participate in the conversion would be affected. Standard permits must be issued to a vessel that is either owned or leased by the permit holder. Some historical captains may not currently own or lease a vessel. To replace their existing permits with standard permits, these historical captains would need to purchase or lease a suitable vessel and pay all applicable inspection and registration fees. An initial U.S. Coast Guard certificate of documentation is \$133 and a renewal is \$26 (46 CFR 67.550). If a U.S. Coast Guard certificate of inspection is required, the annual inspection fee is \$300 for vessels less than 65 ft (19.8 m) and \$600 for vessels 65 ft (19.8 m) and greater in length overall (46 CFR 2.10-101(a)). State boat registration and inspection fees in Gulf States are estimated to range from

approximately \$10 up to \$458, depending on the length of the vessel and state of registration. Due to uncertainty about the business strategies of historical captain permit holders, variation in permit passenger capacities, and the wide range of vessel options, it is not possible to estimate the cost that would be incurred by historical captains to purchase or lease a vessel. The average purchase price for a headboat operating in the Gulf is estimated to be \$426,826 (2021 dollars); the average purchase price for a charter vessel operating in the Gulf is estimated to be \$114,494 (2021 dollars). If historical captains intend to only sell their new standard permits, they could buy a much cheaper vessel to hold the permit prior to the sale. Estimates of for-hire vessel lease prices are not readily available; however, this may be a more affordable option than purchasing a vessel.

In addition to the cost to buy or lease a vessel, there would be an opportunity cost for some historical captains should they choose to replace their historical captain permits with standard permits. This opportunity cost pertains to the potential lost earnings that would result from no longer being able to use their historical captain permit to operate a vessel owned or leased by another individual or business. This opportunity cost cannot be quantified with available data. To extract value from the standard permit, historical captains would need to

either sell their permit or attach it to a purchased or leased vessel capable of servicing paying customers. Again, replacement of historical captain permits is voluntary and it is expected that historical captains will only replace their historical captain permits with standard permits if the benefits of doing so outweigh the costs.

In summary, the information provided above supports a determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Fish, Fisheries, Gulf of Mexico, Historical captain, Permit.

Dated: January 19, 2023.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory

Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.20, revise paragraph (b)(1)(v) to read as follows:

§ 622.20 Permits and endorsements.

* * * * *

(b) * * *

(1) * * *

(v) *Procedure for conversion of permit with historical captain endorsement.* A charter vessel/headboat permit with a historical captain endorsement may be converted to a charter vessel/headboat permit for Gulf reef fish without a historical captain endorsement. A charter vessel/headboat permit with a historical captain endorsement that is converted to a charter vessel/headboat permit without a historical captain endorsement will retain the same vessel permit maximum passenger capacity as the permit it replaces. To convert an eligible charter vessel/headboat permit with a historical captain endorsement, the permit

holder must submit a permit application to the RA by February 27, 2025. If no application to convert an eligible charter vessel/headboat permit with a historical captain endorsement is submitted by February 27, 2025, the permit holder will retain a charter vessel/headboat permit with the historical captain endorsement that is subject to the restrictions described in paragraph (b) (1) (i) (B) of this section.

* * * * *

3. In § 622.373, revise paragraph (f) to read as follows:

§ 622.373 Limited access system for charter vessel/headboat permits for Gulf coastal migratory pelagic fish.

* * * * *

(f) *Procedure for conversion of permit with historical captain endorsement.* A charter vessel headboat permit with a historical captain endorsement may be converted to a charter vessel/headboat permit for Gulf coastal migratory pelagic fish without a historical captain endorsement as described in paragraph (b) (1) of this section. A charter vessel/headboat permit with a historical captain endorsement that is converted to a charter vessel/headboat permit without a historical captain endorsement will retain the same vessel permit maximum passenger capacity as the permit it replaces. To convert an eligible charter vessel/headboat permit with a historical captain

endorsement, the permit holder must submit a permit application to the RA by February 27, 2025. If no application to convert an eligible charter vessel/headboat permit with a historical captain endorsement is submitted by February 27, 2025, the permit holder will retain a charter vessel/headboat permit with the historical captain endorsement that is subject to the restrictions described in paragraph (b) (2) of this section.

[FR Doc. 2023-01408 Filed: 1/26/2023 8:45 am; Publication Date: 1/27/2023]